

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 287

HOUSE BILL 2161

AN ACT

REPEALING TITLE 26, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES; AMENDING SECTIONS 37-231, 37-604, 37-604.01 AND 37-607, ARIZONA REVISED STATUTES; REPEALING SECTIONS 37-610, 37-610.01, AND 37-610.02, ARIZONA REVISED STATUTES; AMENDING TITLE 37, CHAPTER 2, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 37-609; AMENDING TITLE 37, CHAPTER 2, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 37-610; AMENDING TITLE 37, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 8; AMENDING SECTIONS 45-105 AND 48-3609, ARIZONA REVISED STATUTES; RELATING TO PUBLIC LANDS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Title 26, chapter 2, article 2, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 37-231, Arizona Revised Statutes, is amended to read:

5 37-231. State lands subject to sale; reserved interests; state
6 lands not subject to sale

7 A. All state lands, except as otherwise provided for in this title,
8 including all improvements made or placed on or connected with state lands,
9 shall be subject to appraisal and sale as provided in this title.

10 B. Any person over eighteen years of age is entitled to purchase any
11 of the state lands.

12 C. AN EXCHANGE OF STATE LANDS FOR CONSERVATION PURPOSES PURSUANT TO
13 SECTION 37-604 IS NOT CONSIDERED TO BE A SALE OF STATE LANDS UNDER THIS
14 ARTICLE.

15 ~~C.~~ D. All sales, grants, deeds or patents to any state lands sold
16 between July 9, 1954 and March 18, 1968 shall be subject to and shall contain
17 a reservation to the state of an undivided one-sixteenth of all oil, gases
18 and other hydrocarbon substances, coal or stone, metals, minerals, fossils
19 and fertilizer of every name and description, together with all uranium, all
20 thorium, or any other material which is or may be determined by the laws of
21 the state or the United States or decisions of courts to be peculiarly
22 essential to the production of fissionable materials, whether or not of
23 commercial value, subject to the following:

24 1. For the purpose of promoting the sale of state lands and the more
25 active cooperation of the owner of the soil, and to facilitate the
26 development of its mineral resources, the state constitutes the purchaser of
27 the land AS its agent for the purposes specified in this section, and in
28 consideration hereof, relinquishes to and vests in the purchaser of the state
29 land an undivided fifteen-sixteenths of all oil, gas and the value thereof
30 which may be upon or within any state land purchased after July 9, 1954 and
31 before March 18, 1968.

32 2. The purchaser of the soil may sell or lease to any person, firm or
33 corporation the oil and gas and other minerals which may be on or in the
34 land, upon terms and conditions the purchaser and the owner deem best,
35 subject to the provisions and reservations of this section, but the lessee
36 or purchaser shall pay to the state an undivided one-sixteenth of the mineral
37 produced or the value of the mineral produced at the well or mine as
38 determined by the state land department.

39 3. Upon discovery of oil and gas in paying quantities on land
40 adjoining state lands purchased under the authority of this section, the
41 purchaser or the purchaser's lessee shall drill and produce all wells
42 necessary to protect the land so purchased from drainage by wells on lands
43 in which the state has no royalty interest, or has a lesser royalty interest.
44 If the purchaser or the purchaser's lessee fails to protect against such
45 drainage, the state, acting through the state land department, may, three

1 months after demand therefor FOR PROTECTION AGAINST DRAINAGE in writing by
2 the state land department to such purchaser and the purchaser's lessee, enter
3 upon such lands and drill all wells necessary to protect the state against
4 such drainage.

5 4. The interest reserved by the state in any state lands sold may be
6 committed to a drilling unit or cooperative or unit plans of development and
7 operation of oil and gas pools with the United States, its agencies and its
8 and their lessees and permittees, and with private owners and persons holding
9 oil and gas leases on private lands or on state lands. The state land
10 department may, insofar as the interest of the state may be affected thereby,
11 join in and consent to any such plan on behalf of the state. Such agreements
12 shall provide for the equitable division on an agreed basis of the oil and
13 gas produced from the unit, but no such agreement shall relieve any operator
14 from the obligation to develop reasonably the lands and leases as a whole
15 committed thereto. The royalties to which the state is entitled on
16 production from land purchased under this section shall be computed only on
17 that part of the production allocated to such tract. When the agreements
18 made under this section provide for the return of gas to a formation
19 underlying the unit, they may provide that no royalties are required to be
20 paid on the gas so returned.

21 ~~D.~~ E. State lands known to contain oil, gases and other hydrocarbon
22 substances, geothermal resources, coal or stone, metals, minerals, fossils
23 and fertilizer of every name and description, in paying quantities, or
24 uranium, thorium or any other material which is or may be determined by the
25 laws of the state OR the United States or decisions of court COURTS to be
26 peculiarly essential to the production of fissionable materials, whether or
27 not of commercial value, and state lands adjoining lands upon which there are
28 producing oil, gas or geothermal wells or adjoining lands known to contain
29 any of such substances in paying quantities, or uranium, thorium or any other
30 material peculiarly essential to the production of fissionable materials,
31 whether or not of commercial value, shall not be sold. The prohibition
32 against sale shall not operate to prevent the sale of lands known to contain,
33 in paying quantities, common variety minerals as defined in section 27-271
34 or to prevent the sale of lands where the state does not own such substances,
35 minerals or metals in the lands sought to be sold. ~~The provisions of This~~
36 subsection shall not prohibit the sale of such lands located within the
37 exterior boundaries of an incorporated city or town, in which case the
38 commissioner may offer the land for sale, provided the land shall be used
39 solely for a public purpose. Such land shall revert to the state if it is
40 used other than for a public purpose.

41 ~~E.~~ F. Notwithstanding the ~~provisions of subsection C- D~~ of this
42 section, all state lands sold after March 18, 1968 shall be sold with the
43 reservation that all oil, gas, other hydrocarbon substances, helium or other
44 substances of a gaseous nature, geothermal resources, coal, metals, minerals,
45 fossils, fertilizer of every name and description, together with all uranium,

1 all thorium or any other material which is or may be determined by the laws
2 of the United States or of this state, or decisions of court COURTS, to be
3 peculiarly essential to the production of fissionable materials, whether or
4 not of commercial value, and the exclusive right thereto, on, in, or under
5 such land, shall be and remain and be reserved in and retained by the state,
6 regardless of any sale under this section and the issuance of any certificate
7 of purchase to any purchaser of state lands pursuant to this section,
8 provided, that the reservation shall not include common variety minerals as
9 defined in section 27-271, subject to the following:

10 1. The state land department shall adopt rules providing for the
11 protection of the patentee or contract purchaser of state lands, or their
12 successors in interest, and the state of Arizona, against damage to the
13 lands, livestock, water, crops, or other tangible improvements on lands held
14 by such patentee or contract purchaser, and suffered by reason of the use or
15 occupation of such lands by lessees or permittees engaged in mining and oil,
16 gas and geothermal resource exploration and development under leases or
17 permits executed by the department. The state land department may, at any
18 time, require each of its lessees or permittees to execute a bond in a
19 reasonable principal amount conditioned upon payment for all such damages.

20 2. The mineral rights reserved to the state in the lands sold shall
21 be closed to entry and location as a mineral claim or claims, but the
22 department may issue, upon application, mineral exploration permits embracing
23 the reserved mineral rights when such issuance is deemed in the best interest
24 of the state, provided that the surface owner or owners shall have the first
25 right of refusal to acquire such mineral exploration permits.

26 Sec. 3. Section 37-604, Arizona Revised Statutes, is amended to read:

27 37-604. Exchange of state trust land for conservation purposes;
28 limitation and exceptions

29 A. ON THE COMMISSIONER'S INITIATIVE, OR ON APPLICATION FROM A FEDERAL
30 AGENCY, STATE AGENCY, COUNTY, CITY, TOWN OR OTHER PUBLIC ENTITY, the state
31 land department and selection board, ~~for proper management, control,~~
32 ~~protection or public use of state lands,~~ may exchange state TRUST lands
33 managed by the department for any other PUBLIC land within the state TO
34 CONSERVE OPEN SPACE ON THE TRUST LANDS OFFERED BY THE DEPARTMENT IN THE
35 EXCHANGE. The state land department and selection board, ~~to encourage~~
36 ~~compatible use of lands near military airports,~~ may exchange state TRUST
37 lands managed by the department for private lands near military airports.
38 Exchanges may be made ONLY for land owned or administered by FEDERAL
39 AGENCIES, other state agencies, counties, municipalities and private parties
40 OTHER PUBLIC ENTITIES. Exchanges with the United States or its agencies
41 shall be in conformance with section 37-722, but the department shall also
42 follow the procedures for notifying interested parties prescribed by
43 subsection C, paragraph 5 of this section and the classification procedures
44 in section 37-212.

1 B. The department shall adopt rules governing the application and
2 procedure for the exchange of state land. Such rules shall include the
3 following requirements:

4 1. The application shall include:

5 (a) The name, ~~age and residence~~ of the applicant.

6 (b) A legal description of all lands to be considered for exchange.

7 (c) A list of permanent improvements on the state lands to be
8 considered for exchange.

9 (d) A list of the leasehold interest in the state land to be
10 considered for exchange.

11 (e) Accompanying agreements, if any, with the leaseholder or owner of
12 improvements on the state land to be considered for exchange.

13 2. Payment of the fee prescribed by section 37-108.

14 3. Such additional requirements as the department determines to be
15 necessary. Upon completion of processing and analyzing the AN application,
16 and on determining that the proposed exchange would benefit the applicable
17 trust, the department shall notify and deliver a report containing details
18 of the proposed exchange to members of the selection board. At the same time
19 the department shall also notify and provide the report to the state
20 legislators from the legislative districts in which the lands proposed to be
21 exchanged are located.

22 C. Exchanges of state lands are subject to the following requirements:

23 1. THE PROPOSED EXCHANGE MUST BE IN THE BEST INTEREST OF THE STATE
24 LAND TRUST.

25 ~~1. 2. The commissioner shall determine by at least two independent~~
26 ~~appraisals that the state lands being considered for exchange are of~~
27 ~~substantially equal value or of lesser value than the land offered by the~~
28 ~~applicant. However, the commissioner may determine that rural lands being~~
29 ~~exchanged to consolidate land ownership for management purposes require only~~
30 ~~one independent appraisal~~ PUBLIC ENTITY. The commissioner may require the
31 AN applicant to pay REIMBURSE THE DEPARTMENT FOR the cost of appraisals
32 BEFORE THE EXCHANGE IS COMPLETED.

33 3. THE DEPARTMENT SHALL PERFORM OR CAUSE TO BE PERFORMED AN ANALYSIS
34 OF THE PROPOSED EXCHANGE. THE ANALYSIS MUST EXAMINE ALL OF THE FOLLOWING:

35 (a) CURRENT AND PROJECTED INCOME TO THE TRUST BEFORE AND AFTER THE
36 PROPOSED EXCHANGE.

37 (b) THE FISCAL IMPACT OF THE PROPOSED EXCHANGE ON EACH COUNTY, CITY,
38 TOWN AND SCHOOL DISTRICT IN WHICH ALL THE LANDS INVOLVED IN THE PROPOSED
39 EXCHANGE ARE LOCATED.

40 (c) THE PHYSICAL, ECONOMIC AND NATURAL RESOURCE IMPACTS OF THE
41 PROPOSED EXCHANGE ON THE SURROUNDING OR DIRECTLY ADJACENT LOCAL COMMUNITY,
42 ON LOCAL LAND USES AND ON LAND USE PLANS.

43 ~~2. 4. No A county or municipality may~~ SHALL be ~~permitted to~~ NOT
44 ~~select lands in another county or municipality. A SPECIAL DISTRICT SHALL NOT~~
45 ~~SELECT LANDS OUTSIDE THE COUNTY OR COUNTIES IN WHICH THE DISTRICT IS LOCATED.~~

1 ~~3.~~ 5. State lands known to contain oil, gases and other hydrocarbon
2 substances, coal or stone, metals, minerals, fossils and fertilizer, in
3 paying quantities, and state lands adjoining lands upon which there are
4 producing oil or gas wells, or adjoining lands known to contain any of such
5 substances in paying quantities shall not be exchanged. These prohibitions
6 against exchange shall not prevent the exchange of lands where the state does
7 not own such substances, minerals or metals in the lands to be considered for
8 exchange.

9 ~~4.~~ All state lands offered for trade pursuant to this section must be
10 located in the same county as the lands offered to the state. However, lands
11 in adjoining counties more than three miles outside the corporate boundaries
12 of incorporated cities and towns having a population of ten thousand people
13 or less and lands in adjoining counties but more than five miles outside the
14 corporate boundaries of incorporated cities and towns having a population in
15 excess of ten thousand people may be exchanged to facilitate consolidating
16 land ownership if the boards of supervisors of the counties in which lands
17 are to be exchanged give their prior approval.

18 ~~5.~~ 6. Prior to BEFORE public notice of a proposed exchange of state
19 lands for other lands, the department and selection board shall give thirty
20 days' notice in writing to other interested state agencies, counties,
21 municipalities, and leaseholders on state lands that are or may be affected
22 by the exchange. STATE AGENCIES THAT THE STATE LAND DEPARTMENT AND SELECTION
23 BOARD SHALL NOTIFY INCLUDE THE ARIZONA GAME AND FISH DEPARTMENT, DEPARTMENT
24 OF TRANSPORTATION, STATE HISTORIC PRESERVATION OFFICE AND ARIZONA DEPARTMENT
25 OF AGRICULTURE.

26 ~~6.~~ 7. Before any state land may be considered for exchange under the
27 provisions of this article, the land shall be classified as suitable for such
28 purposes in accordance with the provisions of PURSUANT TO section
29 37-212. Any person adversely affected by such classification may appeal from
30 the decision as provided in section 37-215.

31 ~~7.~~ 8. The department shall publish notice of all proposed exchanges
32 in the same manner and places as is required for the sale of state lands
33 pursuant to section 37-237, except that the notice shall be published once
34 each week for four consecutive weeks AT LEAST THREE TIMES BEGINNING AT LEAST
35 FIVE WEEKS BEFORE THE DATE OF THE EARLIEST OF THE PUBLIC HEARINGS REQUIRED
36 BY PARAGRAPH 9 OF THIS SUBSECTION. The notice shall contain a legal AND
37 GENERAL description of the properties LOCATION OF THE LANDS involved IN THE
38 PROPOSED EXCHANGE, THE APPRAISED VALUE OF THE LANDS, THE TIMES AND PLACES OF
39 THE PUBLIC HEARINGS REQUIRED BY PARAGRAPH 9 OF THIS SUBSECTION and other
40 pertinent terms and conditions of the exchange. The department shall also
41 schedule a public hearing on the exchange contemplated in the notice. The
42 hearing shall be held at the county seat of the county in which the state
43 lands proposed to be exchanged are located or in the county in which the
44 majority of the state lands is located. The hearing shall be held not less
45 than fifteen days prior to the date of the selection board's consideration

1 ~~of the proposed exchange, and any person may appear and protest the proposed~~
2 ~~exchange at that time.~~

3 9. THE DEPARTMENT SHALL SCHEDULE AT LEAST TWO PUBLIC HEARINGS ON AN
4 EXCHANGE THAT IS PROPOSED PURSUANT TO THIS ARTICLE. ONE HEARING MUST BE AT
5 THE STATE CAPITOL AND AT LEAST ONE HEARING SHALL BE AT A LOCATION OF GENERAL
6 ACCESSIBILITY IN THE VICINITY OF THE STATE LANDS OFFERED IN THE EXCHANGE IN
7 THE COUNTY WHERE THE MAJORITY OF THE OFFERED STATE LAND IS LOCATED. THE LAST
8 HEARING SHALL BE HELD AT LEAST THIRTY CALENDAR DAYS BEFORE THE SELECTION
9 BOARD'S CONSIDERATION OF THE PROPOSED EXCHANGE.

10 10. ANY PERSON MAY FILE A WRITTEN PROTEST OF A PROPOSED EXCHANGE AT A
11 PUBLIC HEARING PURSUANT TO PARAGRAPH 9 OF THIS SUBSECTION OR AT THE
12 DEPARTMENT AT LEAST FIFTEEN DAYS BEFORE THE DATE OF THE SELECTION BOARD'S
13 CONSIDERATION OF THE EXCHANGE.

14 D. AT THE COMMISSIONER'S DISCRETION, THE TERMS OF THE EXCHANGE MAY
15 INCLUDE THE CONDITION THAT THE CONVEYANCE OF TITLE IS SUBJECT TO A COVENANT
16 THAT RUNS WITH THE LAND AND THAT THE LAND SHALL BE USED ONLY FOR PURPOSES
17 THAT ARE CONSISTENT WITH THE CONSERVATION OF OPEN SPACE ON THE LAND.

18 E. IF THE EXCHANGE IS WITH A COUNTY, CITY, TOWN OR OTHER POLITICAL
19 SUBDIVISION OF THIS STATE, THE COUNTY, CITY OR TOWN IN WHICH THE LAND IS
20 LOCATED MUST INCLUDE THE LANDS CONVEYED TO THE POLITICAL SUBDIVISION IN THE
21 COUNTY, CITY OR TOWN COMPREHENSIVE PLAN OR GENERAL PLAN, AS APPLICABLE, AS
22 OPEN SPACE OR PARK LAND AS HISTORICALLY DESIGNATED AND USED BY THE APPLICABLE
23 COUNTY, CITY OR TOWN IN ITS COMPREHENSIVE OR GENERAL PLAN WITH A SPECIFIC
24 INDICATION THAT FORMER STATE TRUST LAND WAS RECEIVED PURSUANT TO A LAND
25 EXCHANGE AS AUTHORIZED BY ARTICLE X, SECTION 12, CONSTITUTION OF ARIZONA.

26 F. IF LAND EXCHANGED BY THE DEPARTMENT AND SELECTION BOARD IS
27 SUBSEQUENTLY PUT TO USE FOR OTHER THAN CONSERVATION OF OPEN SPACE, THE
28 COMMISSIONER MAY PURSUE LEGAL ACTION TO RESCIND THE EXCHANGE OR TO RECOVER
29 MONETARY DAMAGES IN THE COMMISSIONER'S DISCRETION TO PROTECT THE BEST
30 INTERESTS OF THE TRUST, INCLUDING THE INTEGRITY OF THE LAND EXCHANGE PROCESS.

31 ~~D.~~ G. Lands conveyed to the state under this article shall, upon
32 acceptance of title and recording, be dedicated to the same purpose TRUST
33 BENEFICIARY and administered under the same laws to which the lands conveyed
34 were subject, but may be reclassified as provided in section 37-212.

35 Sec. 4. Section 37-604.01, Arizona Revised Statutes, is amended to
36 read:

37 37-604.01. Exchange of state subsurface rights and interests

38 A. The department and selection board, for the purpose of
39 consolidating surface and subsurface ownership, may exchange unleased or
40 unclaimed subsurface rights and interests and leased oil and gas rights and
41 interests, managed by the state land department for subsurface rights and
42 interests owned by others.

43 B. Such exchanges shall be subject to the following requirements:

44 1. All subsurface rights and interests exchanged shall be of
45 substantially equal value.

1 2. Exchanges of subsurface rights and interests leased for oil and gas
2 shall only be made with the United States of America.

3 3. Leases for oil and gas on subsurface rights and interests exchanged
4 pursuant to this article shall remain in full force and effect for the term
5 of the lease.

6 4. Before any of the state subsurface rights and interests may be
7 considered for exchange under the provisions of this article, they shall be
8 classified as suitable for purposes in accordance with the provisions of
9 PURSUANT TO section 37-212.

10 5. Prior to BEFORE any exchange of subsurface rights and interests the
11 state land department shall give thirty days' notice in writing to other
12 interested state agencies, counties, municipalities and leaseholders on such
13 lands that are or may be affected by the exchange.

14 6. Subsurface rights and interests conveyed to the state under this
15 article shall, upon the acceptance of title and records, be dedicated to the
16 same purpose TRUST BENEFICIARY and administered under the same laws which the
17 lands conveyed were subject to.

18 ~~C. Any person may, within ten days of the date of notice as provided
19 herein, file a written protest of the exchange at the state land department.
20 Upon receipt of such a protest to a contemplated exchange pursuant to this
21 section, the state land commissioner shall, not later than thirty days after
22 receipt of the protest, hold a public hearing at the county seat of the
23 county in which the state lands proposed to be exchanged are located to hear
24 any and all matters relevant to the proposed exchange. Notice of the public
25 hearing shall be mailed to all protestants and published at least weekly
26 during the thirty day period prior to the date of the hearing in a newspaper
27 of general circulation in the county.~~

28 C. THE PROCEDURES PRESCRIBED BY SECTION 37-604 APPLY FOR PURPOSES OF
29 ADMINISTERING APPLICATIONS FOR EXCHANGES INVOLVING STATE SUBSURFACE RIGHTS
30 AND INTERESTS, INCLUDING APPLICATION FILING, NOTICES AND HEARINGS.

31 D. The state land department may promulgate ADOPT rules and
32 regulations governing application and procedures for exchanges of subsurface
33 rights and interests.

34 Sec. 5. Section 37-607, Arizona Revised Statutes, is amended to read:

35 37-607. Method of exchange; valuation

36 A. AN exchange of state TRUST lands managed by the state land
37 department may be initiated by THE COMMISSIONER OR BY the owner of the other
38 PUBLIC lands proposed to be exchanged on application forms provided by the
39 department.

40 B. THE DEPARTMENT SHALL ANALYZE THE PROPOSED EXCHANGE TO DETERMINE AT
41 LEAST:

42 1. IF OPEN SPACE WILL BE CONSERVED ON THE OFFERED STATE TRUST LANDS
43 IF THEY ARE EXCHANGED FOR THE OFFERED PUBLIC LANDS. THE COMMISSIONER:

44 (a) SHALL INQUIRE OF THE OWNER OF THE OFFERED PUBLIC LANDS OF ITS
45 PLANS, FOR CONSERVING THE OPEN SPACE ON THE OFFERED STATE TRUST LANDS AND

1 WHETHER THE OWNER INTENDS OR HAS PLANS TO SUBSEQUENTLY CONVEY THE STATE TRUST
2 LANDS TO ANOTHER PERSON.

3 (b) MUST RECEIVE A WRITTEN RESPONSE FROM THE OWNER BEFORE SCHEDULING
4 ANY PUBLIC HEARING PURSUANT TO SECTION 37-604, SUBSECTION C, PARAGRAPH 9.

5 (c) SHALL INCLUDE IN THE NOTICE OF THE HEARING PURSUANT TO SECTION
6 37-604, SUBSECTION C, PARAGRAPH 8 THE AVAILABILITY OF THE WRITTEN RESPONSE
7 FOR REVIEW AT THE HEARINGS.

8 2. IF THE PROJECTED INCOME TO THE TRUST AFTER THE PROPOSED EXCHANGE
9 WILL EQUAL OR EXCEED THE PROJECTED INCOME TO THE TRUST BEFORE THE EXCHANGE.

10 3. THE FISCAL IMPACT OF THE PROPOSED EXCHANGE ON EACH COUNTY, CITY,
11 TOWN AND SCHOOL DISTRICT IN WHICH ALL THE LANDS INVOLVED IN THE PROPOSED
12 EXCHANGE ARE LOCATED.

13 4. THE PHYSICAL, ECONOMIC AND NATURAL RESOURCE IMPACTS OF THE PROPOSED
14 EXCHANGE ON THE SURROUNDING OR DIRECTLY ADJACENT LOCAL COMMUNITY AND THE
15 IMPACTS ON LOCAL LAND USES AND LAND USE PLANS.

16 ~~B. C. The department, On determining that the proposed exchange~~
17 ~~presents obvious benefits to the applicable trust, AND THAT OPEN SPACE WILL~~
18 ~~BE CONSERVED ON THE OFFERED STATE TRUST LAND AFTER THE EXCHANGE, THE~~
19 ~~DEPARTMENT shall appraise the values ENSURE THAT AT LEAST TWO INDEPENDENT~~
20 ~~APPRAISALS of all lands described in the application IN THE PROPOSED EXCHANGE~~
21 ~~ARE PERFORMED to establish the fair market value. THE STATE TRUST LAND SHALL~~
22 ~~BE APPRAISED WITHOUT CONSIDERATION OF THE LAND'S CONSERVATION AS OPEN SPACE.~~
23 ~~The appraised value of state lands being considered for exchange shall, in~~
24 ~~the opinion of the department, be substantially equal to or less than the~~
25 ~~appraised value of the land offered by the applicant OFFERED PUBLIC LANDS.~~

26 ~~C. D. After completion of the requirements of subsection SUBSECTIONS~~
27 ~~B AND C of this section AND PUBLIC HEARINGS REQUIRED BY SECTION 37-604,~~
28 ~~SUBSECTION C, PARAGRAPH 9, the commissioner shall analyze the long-term~~
29 ~~potential of all the lands proposed to be exchanged and report his THE~~
30 ~~findings to the selection board. The commissioner COMMISSIONER'S REPORT~~
31 ~~shall consider INCLUDE at least the following criteria:~~

32 ~~1. Proximity to existing and proposed development.~~

33 ~~2. Potential zoning and topography of those lands.~~

34 ~~3. The impact of paragraphs 1 and 2 on the lands proposed for~~
35 ~~exchange.~~

36 1. THE DEPARTMENT'S ANALYSIS REQUIRED BY SUBSECTION B OF THIS SECTION.

37 2. A DETERMINATION OF THE VALUES OF ALL LANDS INCLUDED IN THE PROPOSED
38 EXCHANGE.

39 3. A STATEMENT EXPLAINING HOW OPEN SPACE WILL BE CONSERVED ON THE
40 OFFERED STATE TRUST LANDS IF THEY ARE EXCHANGED FOR THE OFFERED PUBLIC LANDS.

41 4. A SUMMARY OF THE ORAL AND WRITTEN TESTIMONY FROM ALL PUBLIC
42 HEARINGS HELD BY THE DEPARTMENT AND OF COMMENTS RECEIVED BY THE DEPARTMENT
43 FROM OTHER STATE AGENCIES, PARTIES WHO PROTEST THE EXCHANGE PURSUANT TO
44 SECTION 37-604, SUBSECTION C, PARAGRAPH 10 AND INTERESTED PARTIES.

1 5. A STATEMENT AND EXPLANATION OF ANY SPECIAL CIRCUMSTANCES THAT MAKE
2 THE EXCHANGE IN THE LONG-TERM BEST INTEREST OF THE TRUST PURSUANT TO
3 SUBSECTION E OF THIS SECTION.

4 ~~E. Based on this analysis,~~ The commissioner shall recommend approval
5 of the exchange only if he THE COMMISSIONER finds that the potential for
6 ~~appreciation in value of the other lands is equal to or greater than the~~
7 ~~state lands~~ PROJECTED INCOME TO THE TRUST AFTER THE EXCHANGE EQUALS OR
8 EXCEEDS THE INCOME TO THE TRUST BEFORE THE EXCHANGE, or that special
9 circumstances make the exchange in the long-term interest of the trust.

10 ~~D.~~ F. In lieu of a written agreement between the owner of the ANY
11 permanent improvements THAT MAY BE ON THE OFFERED STATE LANDS and the
12 applicant OWNER OF THE OFFERED PUBLIC LANDS relieving this state, the
13 department and the commissioner of all duty to compensate the owner for those
14 improvements, the department shall appraise the permanent improvements ~~on the~~
15 ~~state lands being exchanged,~~ pursuant to section 37-322, and the applicant
16 OWNER OF THE OFFERED PUBLIC LANDS shall pay the appraised amount to the
17 department on demand. The department shall pay the appraised amount to the
18 owner of the improvements on the effective date of the exchange.

19 Sec. 6. Repeal

20 Sections 37-610, 37-610.01 and 37-610.02, Arizona Revised Statutes, are
21 repealed.

22 Sec. 7. Title 37, chapter 2, article 14, Arizona Revised Statutes, is
23 amended by adding section 37-609, to read:

24 37-609. Exchange of sovereign lands

25 A. FOR PROPER MANAGEMENT OF STATE LAND, THE DEPARTMENT MAY EXCHANGE
26 THE SURFACE OR SUBSURFACE RIGHTS AND INTERESTS IN SOVEREIGN LANDS OF THIS
27 STATE THAT ARE MANAGED BY THE DEPARTMENT FOR SURFACE OR SUBSURFACE RIGHTS AND
28 INTERESTS IN FEDERAL LANDS, STATE LANDS OF ANOTHER STATE OR LANDS OWNED BY
29 OTHER AGENCIES OR SUBDIVISIONS OF THIS STATE.

30 B. THE DEPARTMENT MAY NOT EXCHANGE SOVEREIGN LAND OF THIS STATE FOR
31 OTHER LANDS UNDER THIS SECTION UNLESS:

32 1. THE COMMISSIONER DETERMINES THAT THE EXCHANGE IS IN THE BEST
33 INTEREST OF THE STATE.

34 2. THE COMMISSIONER DETERMINES BY AT LEAST ONE INDEPENDENT APPRAISAL
35 THAT EITHER OF THE FOLLOWING CONDITIONS APPLY TO THE EXCHANGE:

36 (a) THE FAIR MARKET VALUE OF THE SOVEREIGN LAND OF THIS STATE THAT IS
37 INCLUDED IN THE PROPOSED EXCHANGE IS SUBSTANTIALLY EQUAL TO THE FAIR MARKET
38 VALUE OF THE OTHER LAND THAT IS INCLUDED IN THE PROPOSED EXCHANGE.

39 (b) THE FAIR MARKET VALUE OF THE SOVEREIGN LAND OF THIS STATE THAT IS
40 INCLUDED IN THE PROPOSED EXCHANGE IS GREATER THAN THE FAIR MARKET VALUE OF
41 THE OTHER LAND THAT IS INCLUDED IN THE PROPOSED EXCHANGE AND THIS STATE WILL
42 BE COMPENSATED FOR THE DIFFERENCE IN VALUE WITH A CASH PAYMENT TO THE
43 DEPARTMENT FROM THE OTHER PARTY IN THE EXCHANGE.

44 C. AT LEAST SIXTY DAYS BEFORE ANY EXCHANGE UNDER THIS SECTION, THE
45 DEPARTMENT SHALL:

1 1. PUBLISH A NOTICE OF THE PROPOSED EXCHANGE IN A NEWSPAPER OF GENERAL
2 CIRCULATION IN THE COUNTY IN WHICH THE MAJORITY OF STATE LAND THAT IS
3 INCLUDED IN THE EXCHANGE IS LOCATED. A NOTICE UNDER THIS PARAGRAPH SHALL
4 INCLUDE:

- 5 (a) THE IDENTITY OF THE PARTIES TO THE EXCHANGE.
6 (b) A DESCRIPTION OF ALL PROPERTY INCLUDED IN THE EXCHANGE.
7 (c) THE TERMS AND CONDITIONS OF THE EXCHANGE.
8 (d) THE ADDRESS TO WHICH WRITTEN COMMENTS ON THE EXCHANGE MAY BE
9 MAILED FOR THE COMMISSIONER'S CONSIDERATION. THE COMMENTS MUST BE MAILED
10 WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE.

11 2. GIVE WRITTEN NOTICE OF THE PROPOSED EXCHANGE TO:

12 (a) THE COUNTY OR COUNTIES IN WHICH THE STATE LAND INCLUDED IN THE
13 EXCHANGE IS LOCATED.

14 (b) ANY MUNICIPALITY IN WHICH THE STATE LAND INCLUDED IN THE EXCHANGE
15 IS LOCATED.

16 (c) ANY PERSON WITH AN INTEREST OF RECORD IN THE STATE LAND THAT IS
17 INCLUDED IN THE EXCHANGE.

18 D. NOTICE GIVEN BY THE DEPARTMENT PURSUANT TO SUBSECTION C, PARAGRAPH
19 2 SHALL BE BY CERTIFIED MAIL AND INCLUDE THE INFORMATION LISTED IN SUBSECTION
20 C, PARAGRAPH 1.

21 E. IF THE SOVEREIGN LANDS OF THIS STATE THAT ARE INCLUDED IN THE
22 PROPOSED EXCHANGE ARE LOCATED IN ANOTHER STATE, THE NOTIFICATION REQUIREMENTS
23 UNDER SUBSECTION C SHALL BE APPLIED TO THE ARIZONA COUNTY THAT IS NEAREST THE
24 LANDS.

25 F. IN DETERMINING WHETHER A PROPOSED EXCHANGE IS IN THE BEST INTEREST
26 OF THIS STATE, THE COMMISSIONER SHALL CONSIDER WRITTEN COMMENTS RECEIVED BY
27 THE DEPARTMENT PURSUANT TO SUBSECTION C.

28 G. LAND CONVEYED TO THIS STATE PURSUANT TO THIS SECTION SHALL BECOME
29 SOVEREIGN LAND OF THIS STATE ON ACCEPTANCE OF TITLE AND RECORDING.

30 H. MONIES PAID TO THE DEPARTMENT PURSUANT TO SUBSECTION B, PARAGRAPH
31 2, SUBDIVISION (b) SHALL BE PROMPTLY TRANSFERRED TO THE STATE TREASURER FOR
32 DEPOSIT IN THE APPROPRIATE FUND.

33 Sec. 8. Title 37, chapter 2, article 14, Arizona Revised Statutes, is
34 amended by adding a new section 37-610, to read:

35 37-610. Disposition of surplus floodplain lands

36 A. IF THE DEPARTMENT MANAGES SURPLUS FLOODPLAIN LANDS ACQUIRED FROM
37 THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS, THE COMMISSIONER MAY
38 TRANSFER THE LAND TO AN APPROPRIATE POLITICAL SUBDIVISION OF THIS STATE IF
39 THE LAND WILL BE USED FOR PUBLIC PARKS AND RECREATION FACILITIES.

40 B. THE COMMISSIONER SHALL EVALUATE EACH REQUEST PURSUANT TO THIS
41 SECTION AND, IF THE COMMISSIONER DETERMINES THAT A TRANSFER WOULD SERVE THE
42 BEST INTEREST OF THIS STATE AND THE PUBLIC IN THE AREA IN WHICH THE SURPLUS
43 LAND IS LOCATED, THE COMMISSIONER SHALL RECOMMEND TO THE STATE SELECTION
44 BOARD THAT THE TRANSFER BE APPROVED.

1 C. IF THE STATE SELECTION BOARD APPROVES THE TRANSFER, THE DEPARTMENT
2 SHALL OFFER A PATENT TRANSFERRING THE SURPLUS LAND TO THE POLITICAL
3 SUBDIVISION. ANY PATENT OFFERED UNDER THIS SUBSECTION SHALL REQUIRE THAT THE
4 LAND IMMEDIATELY REVERT TO THIS STATE IF THE LAND IS NOT USED FOR THE PUBLIC
5 PURPOSE FOR WHICH IT WAS CONVEYED.

6 Sec. 9. Title 37, Arizona Revised Statutes, is amended by adding
7 chapter 8, to read:

8 CHAPTER 8

9 MILITARY AIRPORT LAND EXCHANGES

10 ARTICLE 1. GENERAL PROVISIONS

11 37-1201. Declaration of policy

12 IT IS DECLARED THE POLICY OF THE LEGISLATURE TO PROMOTE THE
13 PRESERVATION OF MILITARY AIRPORTS IN THIS STATE BY FACILITATING THE
14 CONSERVATION OF OPEN SPACE AROUND MILITARY AIRPORTS, AND THEREBY TO PROTECT
15 AND ENHANCE THE IRREPLACEABLE ECONOMIC BENEFIT THAT MILITARY AIRPORTS
16 DIRECTLY AND INDIRECTLY CONTRIBUTE TO THE COMMUNITIES AND CITIZENS OF THIS
17 STATE.

18 37-1202. Definitions

19 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

20 1. "HIGH NOISE OR ACCIDENT POTENTIAL ZONE" HAS THE SAME MEANING
21 PRESCRIBED IN SECTION 28-8461.

22 2. "LANDOWNER" MEANS ANY PRIVATE PERSON, FIRM OR CORPORATION HOLDING
23 TITLE TO ANY LAND THAT IS WHOLLY OR PARTIALLY IN TERRITORY IN THE VICINITY
24 OF A MILITARY AIRPORT.

25 3. "MANAGER" MEANS THE MANAGER OF THE SECTION.

26 4. "MILITARY AIRPORT" HAS THE SAME MEANING PRESCRIBED IN SECTION
27 28-8461.

28 5. "SECTION" MEANS THE MILITARY AIRPORT LAND EXCHANGE SECTION OF THE
29 STATE LAND DEPARTMENT.

30 6. "SUBJECT PROPERTY" MEANS PRIVATE LAND THAT IS TO BE OFFERED IN A
31 PROPOSED EXCHANGE PURSUANT TO THIS CHAPTER.

32 7. "TERRITORY IN THE VICINITY OF A MILITARY AIRPORT" HAS THE SAME
33 MEANING PRESCRIBED IN SECTION 28-8461.

34 ARTICLE 2. MILITARY AIRPORT LAND EXCHANGE SECTION

35 37-1203. Military airport land exchange section; purpose;
36 employees; compensation

37 A. SUBJECT TO THE AVAILABILITY OF MONIES IN THE MILITARY AIRPORT LAND
38 EXCHANGE FUND, THE MILITARY AIRPORT LAND EXCHANGE SECTION IS ESTABLISHED
39 WITHIN THE STATE LAND DEPARTMENT FOR THE PURPOSE OF FACILITATING EXCHANGES
40 OF FEDERAL LAND IN THIS STATE FOR PRIVATE LAND IN TERRITORY IN THE VICINITY
41 OF A MILITARY AIRPORT IN THIS STATE.

42 B. ALL PERSONNEL AND ADMINISTRATIVE COSTS SHALL BE PAID FROM THE FUND.
43 THE COMMISSIONER SHALL APPOINT A MANAGER OF THE SECTION, WHO SHALL BE
44 RESPONSIBLE FOR THE ADMINISTRATIVE FUNCTIONS OF THE SECTION. WITH THE

1 COMMISSIONER'S APPROVAL, THE MANAGER MAY HIRE EMPLOYEES NECESSARY TO CARRY
2 OUT THIS CHAPTER.

3 C. COMPENSATION FOR THE MANAGER AND OTHER EMPLOYEES OF THE SECTION
4 SHALL BE DETERMINED PURSUANT TO SECTION 38-611.

5 37-1204. Military airport land exchange proposal application;
6 agreement

7 A. A LANDOWNER MAY APPLY TO THE SECTION FOR ASSISTANCE IN PREPARING
8 A PROPOSAL TO EXCHANGE THE LANDOWNER'S LAND FOR LAND OWNED BY A FEDERAL
9 AGENCY IF THE LANDOWNER'S LAND IS WHOLLY OR PARTIALLY IN A HIGH NOISE OR
10 ACCIDENT POTENTIAL ZONE OR IF ALL OF THE FOLLOWING APPLY:

11 1. THE LANDOWNER'S LAND IS UNDEVELOPED LAND.

12 2. THE LANDOWNER'S LAND IS ZONED FOR USES THAT ARE NOT COMPATIBLE WITH
13 THE OPERATION OF A MILITARY AIRPORT AS DETERMINED BY THE LOCAL JURISDICTION.

14 3. THE LANDOWNER AGREES TO A REZONING OF THE LANDOWNER'S LAND TO USES
15 THAT ARE COMPATIBLE WITH THE OPERATION OF A MILITARY AIRPORT AS A CONDITION
16 OF AN EXCHANGE PROPOSED PURSUANT TO THIS CHAPTER.

17 B. AN APPLICATION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL
18 INCLUDE ALL OF THE FOLLOWING:

19 1. THE NAME AND ADDRESS OF THE LANDOWNER.

20 2. A DESCRIPTION OF THE LOCATION OF THE SUBJECT PROPERTY.

21 3. THE SIZE OF THE SUBJECT PROPERTY IN ACRES.

22 4. A COPY OF THE COUNTY TAX ASSESSOR'S MAP SHOWING THE SUBJECT
23 PROPERTY.

24 5. A COPY OF THE ZONING ORDINANCE THAT APPLIES TO THE SUBJECT
25 PROPERTY.

26 6. A LIST OF ANY IMPROVEMENTS THAT ARE ON THE SUBJECT PROPERTY.

27 7. THE CURRENT USE OF THE SUBJECT PROPERTY AND, TO THE EXTENT KNOWN
28 TO THE LANDOWNER, A HISTORY OF PAST USES OF THE SUBJECT PROPERTY.

29 8. THE LANDOWNER'S PREFERENCE FOR THE GENERAL LOCATION OF FEDERAL
30 LANDS TO BE OFFERED IN A PROPOSED EXCHANGE.

31 C. THE SECTION SHALL EVALUATE EACH APPLICATION THAT IT RECEIVES
32 PURSUANT TO THIS SECTION AND GIVE WRITTEN NOTICE TO THE APPLICANT OF
33 ACCEPTANCE OR REJECTION OF THE APPLICATION BY THE SECTION. IF THE SECTION
34 REJECTS AN APPLICATION, THE NOTICE SHALL STATE THE REASON OR REASONS FOR THE
35 REJECTION AND THAT THE REJECTION IS AN APPEALABLE AGENCY ACTION PURSUANT TO
36 TITLE 41, CHAPTER 6, ARTICLE 10. IF THE SECTION ACCEPTS AN APPLICATION, THE
37 NOTICE SHALL INDICATE THAT THE SECTION AGREES TO ASSIST THE LANDOWNER IN
38 PREPARING A PROPOSAL FOR THE EXCHANGE OF THE LANDOWNER'S LAND FOR FEDERAL
39 LAND IF THE LANDOWNER PAYS THE FEE PRESCRIBED IN SECTION 37-1205, SUBSECTION
40 A, PARAGRAPH 1.

41 37-1205. Powers and duties of the section; limitations

42 A. IF THE SECTION AGREES TO ASSIST A LANDOWNER PURSUANT TO SECTION
43 37-1204, SUBSECTION C, THE SECTION SHALL:

44 1. CHARGE THE LANDOWNER A FEE FOR EACH ACRE OF THE SUBJECT PROPERTY.

45 THE SECTION SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, MONIES

1 RECEIVED PURSUANT TO THIS PARAGRAPH IN THE MILITARY AIRPORT LAND EXCHANGE
2 FUND ESTABLISHED BY SECTION 37-1206 AND SHALL USE THE MONIES TO HIRE STAFF
3 AND SUPPORT THE OPERATIONS OF THE SECTION.

4 2. EVALUATE THE SUITABILITY OF THE SUBJECT PROPERTY FOR EXCHANGE WITH
5 FEDERAL LAND.

6 3. COORDINATE WITH FEDERAL AGENCIES TO IDENTIFY FEDERAL LANDS THAT ARE
7 AVAILABLE AND SUITABLE FOR EXCHANGE FOR THE SUBJECT PROPERTY.

8 4. PREPARE AN EXCHANGE PROPOSAL FOR THE LANDOWNER'S REVIEW.

9 B. THE SECTION MAY:

10 1. REQUEST A LANDOWNER TO ADVANCE OR INCUR COSTS OF EVALUATIONS AND
11 STUDIES THAT MAY BE NEEDED TO PREPARE AN EXCHANGE PROPOSAL INCLUDING LEGAL
12 LAND SURVEYS, TITLE REPORTS, APPRAISALS, ENVIRONMENTAL ASSESSMENTS AND
13 CULTURAL AND BIOLOGICAL INVESTIGATIONS. THE SECTION SHALL DEPOSIT, PURSUANT
14 TO SECTIONS 35-146 AND 35-147, THE MONIES COLLECTED UNDER THIS PARAGRAPH IN
15 A SEPARATE ACCOUNT OF THE MILITARY AIRPORT LAND EXCHANGE FUND AND SHALL USE
16 THE MONIES TO CONTRACT FOR THE EVALUATIONS AND STUDIES THAT ARE NEEDED TO
17 PREPARE AN EXCHANGE PROPOSAL.

18 2. ACCEPT AND SPEND GRANTS, GIFTS AND CONTRIBUTIONS FROM INDIVIDUALS,
19 BUSINESSES, CITIES, TOWNS, COUNTIES, OTHER POLITICAL SUBDIVISIONS OF THIS
20 STATE, OTHER STATE AGENCIES, FEDERAL AGENCIES AND ANY OTHER SOURCES TO HIRE
21 STAFF AND SUPPORT THE OPERATIONS OF THE SECTION.

22 3. AT THE REQUEST OF THE LANDOWNER, PRESENT AN EXCHANGE PROPOSAL TO
23 A FEDERAL AGENCY.

24 4. DISBURSE MONIES IN THE MILITARY AIRPORT LAND EXCHANGE FUND TO A
25 FEDERAL AGENCY THAT AGREES TO AN EXCHANGE PROPOSED UNDER THIS CHAPTER TO
26 COVER COSTS INCURRED BY THE AGENCY IN PREPARING THE EXCHANGE.

27 C. THE LANDOWNER SHALL BE RESPONSIBLE FOR MAKING ALL DECISIONS AND
28 BEARING ALL COSTS ARISING FROM AN EXCHANGE PROPOSED UNDER THIS CHAPTER.
29 NEITHER THE SECTION NOR THE DEPARTMENT SHALL BE THE LANDOWNER'S AGENT.
30 ASSISTANCE PROVIDED BY THE SECTION TO A LANDOWNER UNDER THIS CHAPTER IS
31 LIMITED BY THE AVAILABILITY OF MONIES IN THE MILITARY AIRPORT LAND EXCHANGE
32 FUND. AN AGREEMENT UNDER SECTION 37-1204, SUBSECTION C IS NOT A GUARANTEE
33 OR OTHER ASSURANCE BY THE SECTION, THE DEPARTMENT, THIS STATE OR ANY AGENCY
34 OF THIS STATE THAT A FEDERAL AGENCY WILL EXCHANGE LAND WITH THE LANDOWNER.

35 37-1206. Military airport land exchange fund

36 A. A MILITARY AIRPORT LAND EXCHANGE FUND IS ESTABLISHED CONSISTING OF
37 MONIES APPROPRIATED BY THE LEGISLATURE, FEES DEPOSITED PURSUANT TO SECTION
38 37-1205, SUBSECTION A, PARAGRAPH 1 AND MONIES DEPOSITED PURSUANT TO SECTION
39 37-1205, SUBSECTION B. THE COMMISSIONER SHALL ADMINISTER THE FUND.

40 B. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED FOR THE PURPOSE
41 OF CONDUCTING THE ACTIVITIES OF THE SECTION.

42 C. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190
43 RELATING TO LAPSING OF APPROPRIATIONS.

1 Sec. 10. Section 45-105, Arizona Revised Statutes, is amended to read:

2 45-105. Powers and duties of director

3 A. The director may:

4 1. Formulate plans and develop programs for the practical and
5 economical development, management, conservation and use of surface water,
6 groundwater and the watersheds in this state, including the management of
7 water quantity and quality.

8 2. Investigate works, plans or proposals pertaining to surface water
9 and groundwater, including management of watersheds, and acquire, preserve,
10 publish and disseminate related information which the director deems
11 advisable.

12 3. Collect and investigate information upon and prepare and devise
13 means and plans for the development, conservation and utilization of all
14 waterways, watersheds, surface water, groundwater and groundwater basins in
15 this state and of all related matters and subjects, including irrigation,
16 drainage, water quality maintenance, regulation of flow, diversion of running
17 streams adapted for development in cooperating with the United States or by
18 this state independently, flood control, utilization of water power,
19 prevention of soil waste and storage, conservation and development of water
20 for every useful purpose.

21 4. Measure, survey and investigate the water resources of this state
22 and their potential development and cooperate and contract with agencies of
23 the United States for such purposes.

24 5. Acquire, hold and dispose of property, including land,
25 rights-of-way, water and water rights, as necessary or convenient for the
26 performance of the groundwater and water quality management functions of the
27 department.

28 6. Acquire, other than by condemnation, construct, improve, maintain
29 and operate early warning systems for flood control purposes and works for
30 the recovery, storage, treatment and delivery of water.

31 7. Accept grants, gifts or donations of money or other property from
32 any source, which may be used for any purpose consistent with this title. All
33 property acquired by the director is public property and is subject to the
34 same tax exemptions, rights and privileges granted to municipalities, public
35 agencies and other public entities.

36 8. Enter into an interagency contract or agreement with any public
37 agency pursuant to title 11, chapter 7, article 3 and contract, act jointly
38 or cooperate with any person to carry out the provisions and purposes of this
39 title.

40 9. Prosecute and defend all rights, claims and privileges of this
41 state respecting interstate streams.

42 10. Initiate and participate in conferences, conventions or hearings,
43 including meetings of the Arizona water resources advisory board,
44 congressional hearings, court hearings or hearings of other competent
45 judicial or quasi-judicial departments, agencies or organizations, and

1 negotiate and cooperate with agencies of the United States or of any state
2 or government and represent this state concerning matters within the
3 department's jurisdiction.

4 11. Apply for and hold permits and licenses from the United States or
5 any agency of the United States for reservoirs, dam sites and rights-of-way.

6 12. Receive and review all reports, proposed contracts and agreements
7 from and with the United States or any agencies, other states or governments
8 or their representatives and recommend to the governor and the legislature
9 action to be taken on such reports, proposed contracts and agreements. The
10 director shall take action on such reports, if authorized by law, and review
11 and coordinate the preparation of formal comments of this state on both the
12 preliminary and final reports relating to water resource development of the
13 United States army corps of engineers, the secretary of the interior and the
14 secretary of agriculture, as provided for in the flood control act of 1944
15 (58 Stat. 887; 33 United States Code section 701.1).

16 13. Contract with any person for imported water or for the acquisition
17 of water rights or rights to withdraw, divert or use surface water or
18 groundwater as necessary for the performance of the groundwater management
19 functions of the director prescribed by chapter 2 of this title. If water
20 becomes available under any contract executed under this paragraph, the
21 director may contract with any person for its delivery or exchange for any
22 other water available.

23 14. Recommend to the administrative heads of agencies, boards and
24 commissions of this state, and political subdivisions of this state, rules
25 to promote and protect the rights and interests of this state and its
26 inhabitants in any matter relating to the surface water and groundwater in
27 this state.

28 ~~15. Provide information to the director of the division of emergency~~
29 ~~management of the department of emergency and military affairs according to~~
30 ~~section 26-322.~~

31 ~~16.~~ 15. Conduct feasibility studies and remedial investigations
32 relating to groundwater quality and enter into contracts and cooperative
33 agreements under section 104 of the comprehensive environmental response,
34 compensation, and liability act of 1980 (P.L. 96-510) to conduct such studies
35 and investigations.

36 ~~17.~~ 16. Dispose informally by stipulation, agreed settlement, consent
37 order or alternative means of dispute resolution, including arbitration, if
38 the parties and director agree, or by default of any case in which a hearing
39 before the director is required or allowed by law.

40 ~~18.~~ 17. Cooperate and coordinate with the appropriate governmental
41 entities in Mexico regarding water planning in areas near the border between
42 Mexico and Arizona and for the exchange of relevant hydrological information.

43 18. The director shall:

- 1 1. Exercise and perform all powers and duties vested in or imposed
2 upon the department and adopt and issue rules necessary to carry out the
3 purposes of this title.
- 4 2. Administer all laws relating to groundwater, as provided in this
5 title.
- 6 3. Be responsible for the supervision and control of reservoirs and
7 dams of this state and, when deemed necessary, conduct investigations to
8 determine if the existing or anticipated condition of any dam or reservoir
9 in this state is or may become a menace to life and property.
- 10 4. Coordinate and confer with and may contract with:
11 (a) The Arizona power authority, game and fish commission, state land
12 department, Arizona outdoor recreation coordinating commission, department
13 of commerce, radiation regulatory agency, active management area water
14 authorities or districts and political subdivisions of this state with
15 respect to matters within their jurisdiction relating to surface water and
16 groundwater and the development of state water plans.
17 (b) The department of environmental quality with respect to title 49,
18 chapter 2 for its assistance in the development of state water plans.
19 (c) The department of environmental quality regarding water plans,
20 water resource planning, water management, wells, water rights and permits,
21 and other appropriate provisions of this title pertaining to remedial
22 investigations, feasibility studies, site prioritization, selection of
23 remedies and implementation of the water quality assurance revolving fund
24 program pursuant to title 49, chapter 2, article 5.
25 (d) The department of environmental quality regarding coordination of
26 data bases that are necessary for activities conducted pursuant to title 49,
27 chapter 2, article 5.
- 28 5. Cooperate with the Arizona power authority in the performance of
29 the duties and functions of the authority.
- 30 6. Maintain a permanent public depository for existing and future
31 records of stream flow, groundwater levels and water quality and other data
32 relating to surface water and groundwater.
- 33 7. Maintain a public docket of all matters before the department which
34 may be subject to judicial review pursuant to this title.
- 35 8. Investigate and take appropriate action upon any complaints
36 alleging withdrawals, diversions, impoundments or uses of surface water or
37 groundwater that may violate this title or the rules adopted pursuant to this
38 title.
- 39 9. Report to and consult with the Arizona water resources advisory
40 board at regular intervals.
- 41 10. Adopt an official seal for the authentication of records, orders,
42 rules and other official documents and actions.
- 43 11. Provide staff support to the Arizona water protection fund
44 commission established pursuant to chapter 12 of this title.

1 12. Exercise and perform all powers and duties invested in the
2 chairperson of the Arizona water banking authority commission as prescribed
3 by chapter 14 of this title.

4 13. Provide staff support to the Arizona water banking authority
5 established pursuant to chapter 14 of this title.

6 Sec. 11. Section 48-3609, Arizona Revised Statutes, is amended to
7 read:

8 48-3609. Floodplain delineation; regulation of use

9 A. Except as provided in section 48-3610, the board within its area
10 of jurisdiction shall delineate or may by rule require developers of land to
11 delineate for areas where development is ongoing or imminent, and thereafter
12 as development becomes imminent, floodplains consistent with the criteria
13 developed by the director of water resources.

14 B. Except as provided in section 48-3610, the board shall adopt and
15 enforce regulations governing floodplains and floodplain management in its
16 area of jurisdiction which shall include the following:

17 1. Regulations for all development of land, construction of
18 residential, commercial or industrial structures or uses of any kind which
19 may divert, retard or obstruct floodwater and threaten public health or
20 safety or the general welfare.

21 2. Regulations which establish minimum flood protection elevations and
22 flood damage prevention requirements for uses, structures and facilities
23 which are vulnerable to flood damage. Regulations adopted under this section
24 shall comply with state and local land use plans and ordinances, if any.

25 3. Regulations which provide for coordination by the district with all
26 other interested and affected political subdivisions and state agencies.

27 4. Regulations that require any residential structure built in a
28 floodplain to be constructed so as to place the lowest floor elevation of the
29 structure at or above the regulatory flood elevation, that require commercial
30 or industrial structures to be flood proofed or elevated to or above the
31 regulatory flood elevation and that prohibit any activity in a designated
32 floodway, including fill, that would increase the water surface elevation
33 during a base flood.

34 5. Regulations to allow a mobile home located in a floodplain on
35 August 3, 1984 to be replaced by another mobile home if:

36 (a) The mobile home to be replaced was not damaged by a flood to more
37 than fifty per cent of its value before the flood.

38 (b) The replacement mobile home is elevated so that the bottom of the
39 structural frame or the lowest point of any attached appliances, whichever
40 is lower, is at or above the regulatory flood elevation.

41 6. Regulations that require all new placement of mobile homes to be
42 anchored to prevent flotation, collapse or movement.

43 7. Variance procedures to permit variances from the regulations that
44 do not result in danger or damage to persons or property in floodplains in
45 the area of jurisdiction. Variances may be granted only if special

1 circumstances, such as size, shape, topography, location or surroundings of
2 the property, would cause the strict application of the regulations to
3 deprive the property of privileges enjoyed by similar property in the
4 floodplain. A variance is subject to conditions to ensure that the variance
5 does not constitute a grant of special privileges inconsistent with the
6 limitations on similar property in the floodplain.

7 C. Waste disposal systems shall not be installed wholly or partially
8 in a regulatory floodway.

9 D. Water supply, water treatment and sewage collection and disposal
10 systems built in a regulatory floodplain shall be designed to prevent or
11 minimize floodwater infiltrating the systems and to prevent or minimize
12 floodwater contamination during the base flood.

13 E. Floodplain regulations enacted pursuant to this article may only
14 be adopted after a public hearing at which parties in interest and other
15 citizens have an opportunity to be heard. At least thirty days before the
16 hearing, a notice of the time and place of the hearing shall be published in
17 a newspaper of general circulation within the county or, if no newspaper of
18 general circulation is regularly published, in a newspaper of general
19 circulation nearest the area of jurisdiction. A notice of any hearing
20 accompanied by a copy of each of the proposed regulations shall be furnished
21 to the director at least thirty days before the date of the hearing. A copy
22 of any regulation adopted by a district pursuant to this article shall within
23 five days thereafter be filed with the director and with each political
24 subdivision and municipal corporation in the area of jurisdiction.

25 F. All development of land, construction of residential, commercial
26 or industrial structures or future development within delineated floodplain
27 areas is prohibited unless floodplain regulations have been adopted pursuant
28 to this article for such floodplain area and are in full force and effect.

29 G. Before adopting regulations the board may issue a special permit
30 authorizing construction or development if the board finds that construction
31 or development is not a danger to persons or property.

32 H. Unless expressly provided, this article and any regulations adopted
33 pursuant to this article do not affect:

34 1. Existing legal uses of property or the right to continuation of
35 such legal use. However, if a nonconforming use of land or a building or
36 structure is discontinued for twelve months or destroyed to the extent of
37 fifty per cent of its value, as determined by a competent appraiser, any
38 further use shall comply with this article and regulations of the district.

39 2. Reasonable repair or alteration of property for the purposes for
40 which the property was legally used on August 3, 1984 or on the date any
41 regulations affecting such property take effect, except that any alteration,
42 addition or repair to a nonconforming building or structure which would
43 result in increasing its flood damage potential by fifty per cent or more
44 shall be either flood proofed or elevated to or above the regulatory flood
45 elevation.

1 3. Reasonable repair of structures constructed with the written
2 authorization required by section 48-3613.

3 4. Facilities constructed or installed pursuant to a certificate of
4 environmental compatibility issued pursuant to title 40, chapter 2, article
5 6.2.

6 I. Within one hundred twenty days after completion of construction of
7 any flood control protective works which changes the rate of flow during the
8 flood or the configuration of the floodplain upstream or downstream from or
9 adjacent to the project, the person or agency responsible for installation
10 of the project shall provide to the governing bodies of all jurisdictions
11 affected by the project a new delineation of all floodplains affected by the
12 project. The new delineation shall be done according to the criteria adopted
13 by the director of water resources.

14 ~~J. On the granting of a variance, permit or waiver for the~~
15 ~~construction of a structure which is otherwise contrary to the adopted~~
16 ~~floodplain regulation of the area, the board shall provide written notice to~~
17 ~~the grantees of such variance, permit or waiver that, if the structure is a~~
18 ~~dwelling unit or business as defined by section 26-321, the land on which the~~
19 ~~structure is located is ineligible for exchange of state land pursuant to the~~
20 ~~flood relocation and land exchange program provided for by title 26, chapter~~
21 ~~2, article 2. The board shall record a copy of the notice in the office of~~
22 ~~the county recorder in a manner so that it appears in the chain of title of~~
23 ~~the affected parcel of land.~~

24 K. J. A flood control district or appropriate public agency which has
25 failed to adopt or enforce floodplain regulations required by this section
26 shall not be eligible for disaster relief identified by section 35-192,
27 subsection D, paragraphs 3 and 5. The director of water resources shall
28 advise the director of the division of emergency management within the
29 department of emergency and military affairs of such failure to comply.

30 Sec. 12. Conditional enactment

31 A. Sections 2, 3, 4 and 5 of this act are not effective unless the
32 Constitution of Arizona is amended by vote of the people in the next general
33 election to authorize exchanges of state trust lands for other public lands.

34 B. This section does not constitute a submission of the provisions of
35 this act to the people for approval under the power of the referendum.

APPROVED BY THE GOVERNOR MAY 22, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 23, 2002.

Passed the House March 26, 2002,

Passed the Senate April 30, 2002

by the following vote: 40 Ayes,

by the following vote: 26 Ayes,

18 Nays, 2 Not Voting

0 Nays, 4 Not Voting

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of July, 2011,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of _____

_____ , 20 _____

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

H.B. 2161

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 16, 2002,

by the following vote: 56 Ayes,

1 Nays, 3 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of May, 2002,

at 3:00 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 22 day of

May, 2002,

at 11:05 o'clock A M.

[Signature]
Governor of Arizona

H.B. 2161

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of May, 2002

at 3:23 o'clock P M.

[Signature]
Secretary of State